

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5567 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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POPAT SHIVA, SINCE DECEASED THROUGH HIS HEIRS AND LEGAL R.

Versus

TALUKA DEVELOPMENT OFFICER  
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Appearance:

MR DG CHAUHAN for Petitioners

RULE SERVED for Respondent No. 1

MS ML SHAH, GOVERNMENT PLEADER for Respondent No. 2  
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CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 31/03/2000

ORAL JUDGEMENT

1. By means of filing this petition under Article  
226 of the Constitution, the petitioner has prayed to  
issue a writ of certiorari or any other appropriate writ

order or direction to quash and set aside the order dated May 5, 1986 passed by the State of Gujarat under Section 211 of the Bombay Land Revenue Code, 1879 by which N.A. permission dated December 14, 1983 granted by Executive

Committee and Taluka Development Officer, Rajkot in favour of the petitioner is set aside.

2. The petitioner is the owner of land bearing Survey No.97 admeasuring 3 Acres 2 Gunthas located at Village Kankot, Taluka Rajkot, District Rajkot. The petitioner was desirous of using his land for non-agricultural purposes. Therefore, he instructed his power of attorney holder Mr. Babulal D. Patel to make an application for obtaining N.A. permission. Accordingly, the power of attorney holder made an application to the competent authority on July 19, 1983 and prayed to grant N.A. permission. The Executive Committee and Taluka Development Officer, Rajkot after considering the layout plan submitted by the power of attorney holder of the petitioner as well as recommendations and opinions expressed by Deputy Town Planner and other authorities, granted N.A. permission by an order dated December 14, 1983 which is produced by the petitioner at Annexure A to the petition. On perusal of the order dated December 14, 1983 passed by Taluka Development Officer, Rajkot granting N.A. permission to the power of attorney holder of the petitioner, the Revisional Authority was of the opinion that the said order being illegal was liable to be set aside. Therefore, the Revisional Authority i.e. the State Government issued notice dated September 17, 1985 to the petitioner calling upon him to show cause as to why N.A.

permission granted by order dated December 14, 1983 should not be set aside, for the reasons stated in the said notice. The matter was heard by the Revisional Authority on February 27, 1986 at Rajkot and an opportunity of being heard was accorded to the petitioner. After considering the documents and hearing the parties, the Revisional Authority held that in the map prepared by the petitioner, distance from the middle of 12m wide road was not maintained as stipulated in Condition No.10 of the N.A. permission. The Revisional Authority further deduced that application for N.A.

permission submitted by the power of attorney holder was not competent and on the basis of the said application, N.A. permission could not have been granted. In view of the above referred to conclusions, the Revisional Authority has set aside NA permission granted to the petitioner by its order dated May 5, 1986 giving rise to the present petition.

3. Mr. D.G. Chauhan, learned counsel for the petitioner submitted that as per Condition No.10 which is mentioned in N.A. permission dated December 14, 1983 the petitioner was required to maintain certain distance at the time of putting up construction and therefore, the Revisional Authority was not justified in setting aside the N.A. permission on the ground that the petitioner had failed to mention that distance in the plan for construction. What was claimed was that N.A. permission was granted to the petitioner after obtaining necessary

opinions and recommendations from different authorities and therefore the N.A. permission should not have been set aside by the Revisional Authority. The learned counsel for the petitioner emphasised that power of attorney holder of the petitioner was competent to make an application for N.A. permission in respect of land owned by the petitioner and therefore the N.A. permission once granted should not have been set aside on the ground that N.A. permission was not applied for by the occupant. According to the learned counsel, the N.A. permission was granted on December 14, 1983 whereas revisional powers were sought to be exercised by issuance of show cause notice dated September 17, 1985 and as revisional powers are not exercised within reasonable time, as interpreted by the Supreme Court from time to time, the impugned order should be set aside.

4. Ms. M.L. Shah, learned counsel for the respondents pleaded that the power of attorney holder of the petitioner was not competent to make an application for N.A. permission and thus, N.A. permission granted being void, the Revisional Authority was justified in setting aside the same. It was also stressed that the petitioner having committed breach of Condition No.10 which was stipulated in N.A. permission, the Revisional Authority was within its jurisdiction in passing the impugned order. According to the learned counsel for the respondents, before passing the impugned order, the petitioner was heard as well as all relevant documents

were considered by the Revisional Authority and therefore the petition should be dismissed.

5. I have heard the learned counsel for the parties as well as taken into consideration the documents which form part of the petition. From the record of the case, it is evident that the application for N.A. permission was never made by the petitioner but was made by his power of attorney holder. In the application submitted for N.A. permission, it was never claimed by the power of attorney holder that he was in actual physical possession of the land belonging to the petitioner or that the land was transferred to him and was therefore entitled to make application for N.A. permission as an occupant thereof. The scheme of Section 65 is that the occupant is entitled to erect farm buildings, construct wells or tanks or make any other improvements on the land for the better cultivation of the land or its more convenient use either by himself, his servants, tenants, agents or other legal representatives. But if any occupant wishes to use his holding or any part thereof for any other purpose, Collector's permission has to be applied for, in the first place by the occupant. Section 65 clearly provides that unless the Collector in a particular instance otherwise directs, no such application shall be recognised except it is made by occupant. The scheme of Section 65 has been examined by Division Bench of this court in G.K. Patel and Others

vs. C.N. Joshi, Deputy Secretary, Revenue Department 17 GLR 108 where in paragraph 5 of the reported decision, it is clearly ruled that the application for N.A. permission has got to be made by the occupant but where a lawful transfer has been made by the occupant, the transferee can also make an application. It is not the case of the petitioner that he has lawfully transferred his land to his power of attorney holder nor the power of attorney holder at any point of time claimed that he was in actual possession of land in question and should therefore be treated as occupant within the meaning of Section 2(16) of the Bombay Land Revenue Act, 1979. Under the circumstances, I am of the opinion that the Revisional Authority was justified in concluding that the application submitted by the power of attorney holder for obtaining N.A. permission itself was not competent and N.A. permission granted on the basis of incompetent

application was bad in law. The other ground which has weighed with the Revisional Authority in setting aside N.A. permission, namely that the petitioner has failed to maintain distance as stipulated in Condition No.10 of the N.A. permission in the plan also cannot be ignored. The submission that the revisional powers have not been exercised within a reasonable time and therefore the petition should be accepted as devoid of merits. It is well settled that a void order does not confer any right and is non est. When the application for N.A. permission was not maintainable at the behest of power of

attorney holder, one who is granted permission does not get any valid right thereunder at all. It is true that powers under Section 211 of the Bombay Land Revenue Code are required to be exercised within a reasonable time. But exercise of powers within a reasonable time has to be judged from the date on which the Revisional Authority comes to know about the order in respect of which revisional powers are sought to be exercised. The revisional power is conferred to effectuate a purpose and that it has to be exercised in a reasonable manner which inheres the concept of its exercise within a reasonable time but length of time depends on facts of each case. As observed earlier, there is nothing to indicate that after the order granting N.A. permission had come to the knowledge of the Revisional Authority, undue time was taken by the Revisional Authority in initiating proceedings for cancellation of the same. Having regard to the facts of the case, it cannot be said that revisional powers have been exercised after unreasonable time so as to warrant interference of the court in the present petition. The petition, therefore, cannot be accepted and is liable to be dismissed. However, this will not preclude the petitioner who is owner of the land from filing another application for N.A. permission as contemplated by the Act and it is clarified that as and when such an application is made by the petitioner, the same shall be considered by the authorities in accordance with law and without any avoidable time.

6. Subject to foregoing clarification, the petition fails and is dismissed. Rule is discharged with no orders as to costs.

( J.M. Panchal, J.)

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